

ESTTA Tracking number: **ESTTA204582**

Filing date: **04/14/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92048989
Party	Defendant Van Nelle Tabak Nederland BV
Correspondence Address	Brewster Taylor Larson & Taylor 1199 North Fairfax Street, Suite 900 Alexandria, VA 22314-1437 UNITED STATES
Submission	Other Motions/Papers
Filer's Name	BREWSTER TAYLOR
Filer's e-mail	BTAYLOR@STITES.COM
Signature	/BT/
Date	04/14/2008
Attachments	MOTION TO DISMISS.pdf (9 pages)(368223 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of
Registration Nos. 1,686,628, 2,950,896, and
3,328,623

TOP TOBACCO, LP)	
)	
)	
v.)	
)	Cancellation No. 92048989
)	
VAN NELLE TABAK NEDERLAND BV,)	
)	
Respondent.)	

MOTION TO DISMISS

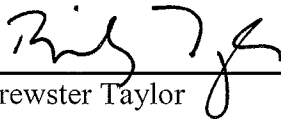
Pursuant to 37 C.F.R. § 2.127 and Fed. R. Civ. P. 12(b)(1), **VAN NELLE TABAK NEDERLAND BV** (hereinafter “Respondent”), hereby moves to dismiss the Petition for Cancellation of U.S. Registration No. 1,686,628 on the grounds that the issue of cancellation of the registration is moot.

There is no actual “case” or “controversy” involving cancellation of U.S. Registration No. 1,686,628. As shown by the attached Exhibit 1, consisting of print-outs from the Trademark Office database which show the filing of the declaration under Section 8 in 1998 and the filing of Petitioner’s Cancellation Petition last month but no filing of an application for renewal on or before the due date of May 12, 2002, or anytime thereafter. Therefore, the registration has expired and should have been cancelled by the Director long ago.

The “mootness” doctrine, which results from the Article III justiciability requirement requires that a case present a live case or controversy. *Burke v. Barnes*, 479 U.S. 361, 363

(1987). There can be no issue of cancellation of U.S. Registration No. 1,686,628 on the grounds of abandonment since the registration has expired and should have been formally cancelled years ago for failure to file a declaration of continued use under 15 U.S.C. § 1058.

Respectfully Submitted,
STITES & HARBISON, PLLC

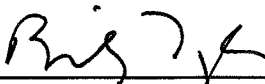


Brewster Taylor

Transpotomac Plaza
1199 North Fairfax Street
Suite 900
Alexandria, Virginia 22314
(703) 739-4900
April 14, 2008

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing MOTION TO DISMISS was *mailed via first class mail*, postage prepaid, to counsel for Petitioner, Antony J. McShane, Esquire, Lara V. Hirshfeld, Esquire and Gregory J. Leighton, Esquire, NEAL, GERBER & EISENBERG LLP, Two North LaSalle Street, Chicago, Illinois 60602-3801, on this the *14th day of April 2008*.



Brewster Taylor

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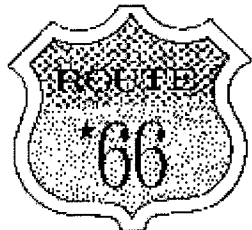
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Serial Number: 73745820 Assignment Information

Trademark Document Retrieval

Registration Number: 1686628

Mark



(words only): ROUTE 66

Standard Character claim: No

Current Status: A cancellation proceeding has been filed at the Trademark Trial and Appeal Board and is now pending.

Date of Status: 2008-03-07

Filing Date: 1988-08-12

Transformed into a National Application: No

Registration Date: 1992-05-12

Register: Principal

Law Office Assigned: LAW OFFICE 14

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 40S -Scanning On Demand

Date In Location: 2007-10-15

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. NAVIGATOR INC.

Address:

NAVIGATOR INC.

EURO-CANADIAN CENTRE MARLBOROUGH ST., 1ST FLOOR

NASSAU

Bahamas

Legal Entity Type: Corporation

State or Country of Incorporation: Bahamas

GOODS AND/OR SERVICES

International Class: 032

Class Status: Section 8 - Cancelled

Basis: 44(e)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

International Class: 034

Class Status: Active

CIGARETTES, LIGHTERS

Basis: 44(e)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

Lining and Stippling: THE STIPPLING SHOWN IN THE DRAWING OF THE MARK IS FOR SHADING PURPOSES ONLY.

Design Search Code(s):

01.01.03 - Star - a single star with five points

24.01.02 - Shields or crests with figurative elements contained therein or superimposed thereon

24.01.03 - Shields or crests with letters, punctuation or inscriptions contained therein or superimposed thereon

24.01.04 - Shields or crests with numbers contained therein or superimposed thereon

25.03.05 - Backgrounds covered with dots; Dotted backgrounds

Foreign Application Number: 1343470

Foreign Registration Number: A1343470

Foreign Registration Date: 1988-05-05

Country: United Kingdom

Foreign Filing Date: 1988-05-05

Foreign Expiration Date: 1995-05-05

Foreign Application Number: 1343468

Foreign Registration Number: A1343468

Foreign Registration Date: 1988-05-05

Country: United Kingdom

Foreign Filing Date: 1988-05-05

Foreign Expiration Date: 1995-05-05

Foreign Application Number: 1343469

Foreign Registration Number: A1343469

Foreign Registration Date: 1988-05-05

Country: United Kingdom

Foreign Filing Date: 1988-05-05

Foreign Expiration Date: 1995-05-05

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

<http://tarr.uspto.gov/servlet/tarr?regser=serial&entry=73745820>

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2008-03-07 - Cancellation Instituted No. 9999999

2007-10-15 - Case File In TIGRS

1999-05-25 - Cancellation terminated for Proceeding

1999-05-25 - Cancellation dismissed for Proceeding

1998-08-06 - Partial Section 8 (6-year) accepted

1998-05-07 - Section 8 (6-year) filed

1996-07-02 - Cancellation Instituted No. 9999999

1992-05-12 - Registered - Principal Register

1992-02-18 - Published for opposition

1992-01-17 - Notice of publication

1991-08-27 - Approved for Pub - Principal Register (Initial exam)

1991-07-31 - Communication received from applicant

1991-02-14 - Non-final action mailed

1990-12-07 - Communication received from applicant

1990-06-11 - Inquiry as to suspension mailed

1990-06-08 - Assigned To Examiner

1989-07-12 - Letter of suspension mailed

1989-07-07 - Non-final action mailed

1989-04-27 - Communication received from applicant

1988-10-28 - Non-final action mailed

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record
BREWSTER TAYLOR

Correspondent
Brewster Taylor

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Larson & Taylor
1199 North Fairfax Street, Suite 900
Alexandria, VA 22314-1437

Domestic Representative
LARSON & TAYLOR



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07-May-1998	Paper Correspondence Incoming	<input type="checkbox"/>	
12-May-1992	Registration Certificate	<input type="checkbox"/>	
12-May-1992	Registration Certificate	<input type="checkbox"/>	

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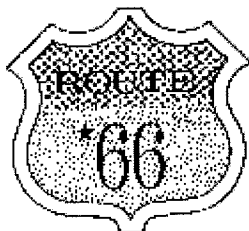
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Word Mark	ROUTE 66
Goods and Services	(CANCELLED) IC 032. US 045 046 048. G & S: [BEER, ALE, LAGER, STOUT, AND SHANDY; SOFT DRINKS; SYRUPS AND CONCENTRATES FOR MAKING SOFT DRINKS; FRUIT JUICES] IC 034. US 002 008 009 017. G & S: CIGARETTES, [CIGARS, CIGARILLOS; SMOKING TOBACCO, CHEWING TOBACCO, SNUFF, MATCHES,] LIGHTERS [, ASHTRAYS, PIPES, TOBACCO CASES NOT OF PRECIOUS METAL AND CIGARETTE PAPERS]
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	01.01.03 - Star - a single star with five points 24.01.02 - Shields or crests with figurative elements contained therein or superimposed thereon 24.01.03 - Shields or crests with letters, punctuation or inscriptions contained therein or superimposed thereon 24.01.04 - Shields or crests with numbers contained therein or superimposed thereon 25.03.05 - Backgrounds covered with dots; Dotted backgrounds
Serial Number	73745820
Filing Date	August 12, 1988
Current Filing Basis	44E
Original Filing Basis	44D;44E
Published for Opposition	February 18, 1992
Change In Registration	CHANGE IN REGISTRATION HAS OCCURRED
Registration Number	1686628
Registration Date	May 12, 1992

Owner (REGISTRANT) LEVY, MAIRADE ANN INDIVIDUAL IRELAND 148A RUSTHALL AVENUE LONDON W41BS ENGLAND

(REGISTRANT) LEVY, ANDRE JACQUES INDIVIDUAL UNITED KINGDOM 148A RUSTHALL AVENUE LONDON W41BS ENGLAND

(LAST LISTED OWNER) NAVIGATOR INC. CORPORATION ASSIGNEE OF BAHAMAS EURO-CANADIAN CENTRE MARLBOROUGH ST., 1ST FLOOR NASSAU BAHAMAS

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record BREWSTER TAYLOR

Priority Date May 5, 1988

Description of Mark THE STIPPLING SHOWN IN THE DRAWING OF THE MARK IS FOR SHADING PURPOSES ONLY.

Type of Mark TRADEMARK

Register PRINCIPAL

Affidavit Text PARTIAL SECT 8 (6-YR).

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